

The Honorable Philip H. Brandt  
Chapter 13  
Hearing Date: August 21, 2008  
Hearing Time: 9:30 a.m.

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

In re:

LESTER AND KIMBERLEY HENLEY,  
Debtors.

)  
)  
) Bankruptcy Case No. 07-13985  
)  
) MEMORANDUM IN SUPPORT OF  
) ADMINISTRATIVE EXPENSE CLAIM OF  
) THE BUSH SCHOOL  
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THE BUSH SCHOOL, by and through its undersigned attorneys, hereby submits this Memorandum in support of the treatment of its post-petition claim as an administrative expense.

As of the date of filing the petition, August 24, 2007, the Debtors owed The Bush School \$15,773.12 See Declaration of Robin Bentley dated February 7, 2008 (Docket #54). Thereafter, the Debtors chose to keep their daughter enrolled at The Bush School, incurring expenses for tuition, books, and other school charges. The Debtors did not disclose the fact of their bankruptcy filing to the Bush School, but made monthly payments of \$500.00 against their accruing obligations. *Id.* ¶¶2, 3. When the fact of the bankruptcy filing was finally disclosed, in February, 2008, the amount owing to The Bush School for post-petition charges was \$4,973.38. *Id.* ¶3.

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ADMINISTRATIVE EXPENSE CLAIM OF  
THE BUSH SCHOOL - 1

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1 The Debtor has acknowledged this post-petition obligation to The Bush School in its  
2 proposed Amended Chapter 13 Plan, but had proposed that it be paid with, but in full in  
3 advance of, the unsecured creditors. Both The Bush School and the Chapter 13 Trustee have  
4 objected to that proposed treatment. The parties have now stipulated that the post-petition  
5 obligations should be paid on confirmation of the Plan, as an administrative expense claim.  
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7 Administrative expense treatment is appropriate for this post-petition obligation.  
8 Since the charges accrued subsequent to the bankruptcy filing, they cannot be included with  
9 the Debtor's unsecured claims. Administrative expense treatment is governed by 11 U.S.C.  
10 §503(b). "In making this determination it is clear that the allowance of such claims is an area  
11 where the court is accorded broad discretion." *In re Butcher*, 108 B.R. 634, 636 (Bankr. E.D.  
12 Tenn. 1989). As recognized by Collier, the Code makes no attempt "to enumerate specifically  
13 all of the potential items of expense which could constitute 'the actual, necessary costs and  
14 expenses of preserving the estate.'" 3 L. King, *Collier on Bankruptcy* ¶503.0491(a)(i) (15th  
15 ed.). One circuit court has stated, in discussing administrative expense claims:  
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18 It is clear from the face of the statute, however, that expenses  
19 not explicitly listed in section 503(b) can receive administrative-  
20 expense status in one of two ways, either as a nonlisted 'actual,  
21 necessary' expense of preserving the estate under 503(b)(1)(A)  
22 or as a nonlisted administrative expense under 503(b) in  
23 general. Either way, there is room in the statute for courts to  
24 accord administrative-expense priority to postpetition expenses,  
25 and courts have given this status to certain categories of  
26 postpetition claims that are not explicitly listed in the statute.

27 *In re N.P. Mining Co., Inc.*, 963 F.2d 1449, 1452 (11<sup>th</sup> Cir. 1992).

28 An example of the extent to which a nonlisted administrative expense can be allowed  
is found in *In re Younger*, 163 B.R. 609 (Bankr. S.D. Ga. 1993). In that involuntary  
chapter 7 case, the Debtor refused to cooperate with the court, was incarcerated as a result,

1 and had significant medical expenses while incarcerated. The U.S. Marshall's Office asserted  
2 an administrative expense claim for the cost of incarceration and medical expenses it incurred.  
3 The court found that it was not necessary for the claimant to show a measurable benefit to the  
4 estate to confer administrative expense status, that other policy considerations could apply,  
5 and granted the administrative expense claim.  
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7 It has been held that another factor in determining whether administrative expense  
8 status should be granted is whether the debtor induced the claimant to perform the services for  
9 which administrative claim treatment is sought. *In re New Power Co.*, 313 B.R. 496,504-05  
10 (Bankr. N.D. Ga. 2004); *see also In re Adelphia Bus. Solutions, Inc.*, 296 B.R. 656, 666  
11 (Bankr. S.D.N.Y. 2003). Finally, another consideration in granting administrative expense  
12 status is the desire to prevent unjust enrichment of the debtor. *In re Hillsborough Holdings*  
13 *Corp.*, 207 B.R. 299, 306 (Bankr. M.D. Fla. 1997).  
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15 In this case there is no question the Debtors induced The Bush School to provide the  
16 services rendered. Post-petition, they enrolled their daughter in the school, incurred numerous  
17 expenses, and made partial payments, all while not informing the school that they had sought  
18 bankruptcy protection. As soon as the bankruptcy filing was discovered, The Bush School  
19 demanded that ongoing expenses be paid immediately, and the responsibility for future  
20 enrollment expense has been acknowledged by a third party. To disallow administrative  
21 expense status would result in unjust enrichment for the Debtor, who received the benefit of  
22 the services offered by The Bush School, post-petition, without compensation.  
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24 Finally, costs of raising children, including tuition, are recognized as regular expenses  
25 of a debtor under 11 U.S.C. §707(b)(2)(A), and thus should be considered among the  
26 reasonable and necessary expenses to be incurred by a debtor in a bankruptcy proceeding, and  
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1 thus qualify under 11 U.S.C. §503(b). In this case, the Debtor incurred the expense  
2 voluntarily, and received the benefit of the services provided. The Debtor has acknowledged  
3 the debt, and asks that it be paid on confirmation. Since the obligation cannot be treated as an  
4 unsecured claim, the other option would be to force The Bush School to attempt to collect the  
5 debt during the course of the bankruptcy proceeding, which would likely interfere with Plan  
6 performance. On information and belief, there are more than sufficient funds on hand at  
7 confirmation to pay the post-petition obligations of The Bush School.  
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9 For all the foregoing reasons, The Bush School respectfully requests that the  
10 stipulation be approved, the Amended Plan be confirmed, and the post-petition claim of The  
11 Bush School be paid on confirmation.  
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13 Dated this 20<sup>th</sup> day of August, 2008.

14 KARR TUTTLE CAMPBELL  
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16  
17 /s/ Merrilee A. MacLean  
18 Merrilee A. MacLean WSBA #12732  
19 Attorneys for The Bush School  
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